IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 477 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KALIBU KALU HEIRS OF KALU VALIMOHAN - Appellant(s)
Versus
STATE OF GUJARAT - Defendant(s)

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Appearance :
MR NIRAJ BUCH for MR ND NANAVATI for Appellant(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6,1.2.7
MR UDAY R BHATT A.G.P. for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 08/11/2006

ORAL JUDGMENT

1. The original appellants before the Reference Court i.e., Court of Extra Assistant Judge, at Junagadh have filed this appeal to seek enhancement of market rate

determined by the learned Judge in his judgment dated 30th November, 1982 in Land Reference Case No. 16 of 1980. By the said judgment and award, the learned Judge has granted additional Rs.1.60 paise to the appellants over and above the compensation awarded by the Special Land Acquisition Officer.

2. The appellants who are the owners of the agricultural land bearing survey no. 1429 admeasuring 6 Acres and 35 Gunthas situated at a distance of about 2 kms., from Veraval towards Junagadh. The said land was initially acquired for the purpose of construction of tar road between Veraval and Junagadh and in the year 1955-56, proceedings under Land Acquisition Act [hereinafter referred to as the “Act”] were initiated and ultimately, about 24 Gunthas of land was acquired from the said field. The acquisition divided the field into two parts, one the eastern part admeasuring 1 Acre and 2 Gunthas and another western part. It appears from the record that the western part was bigger in size than the eastern part. Later on, need to widen the road was felt and also to protect the road, it as found necessary to have clay areas. Hence, again in the year 1977, decision to acquire part of this land was taken. Notification under Section 4 of the Act was issued on 23rd August, 1977 and it was duly

published in Government Gazette. Subsequently declaration under Section 6 of the Act was also made after complying with all the necessary requirements. The Special Land Acquisition Officer ultimately, determined the market value of the land and awarded compensation of Rs.1,247.85 paise and solatium of Rs.187.15 paise. In all Rs.1,435=00. In other words, the compensation awarded by the Special Land Acquisition Officer was at the rate of 12.50% per sq. mtr. The appellants however, were not satisfied by the award made by the Special Land Acquisition Officer and, therefore, request to make the Reference under Section 18 of the Act was made and that was duly granted, which ultimately culminated into aforesaid Reference Case.

3. Before the Reference Court the parties led evidence, oral as well as documentary. The case of the appellants was that the market value determined by the Special Land Acquisition Officer was much on lower side and he had completely ignored certain relevant aspects, such as utility of the land. The land was garden land, but he only held it to be jarayat land. According to the appellants the market value ought to have been fixed at Rs.29.3/8 ps., per sq. mtr. The Reference was contested by the respondent by filing written statement at Exh. 11.

According to the respondent, the award was just and proper and the claim made by the appellants was exaggerated. According to him, no land was ever sold in that area at the rate of Rs.20,000=00 per bigha. According to him the land was of medium quality and not bagayat or garden land.

4. On the basis of the material produced before it, the Reference Court arrived at a conclusion that the compensation awarded by the Special Land Acquisition Officer was inadequate and it was required to be increased by 1.60 paise per sq. mtr. The appellants however, are not satisfied by the said increase and hence they have filed this appeal for further sum of Rs.22,182=00,

5. I have gone through the record of this appeal and in particular the judgment of the Reference Court. I have also heard Mr. Niraj Buch learned advocate appearing for the appellants and Mr. Uday Bhatt learned A.G.P., for the respondent. It is submitted by Mr. Buch that considering the sale instances that have been produced before the Court, the learned Judge ought to have determined the market value in the vicinity of Rs.22 per sq. mtr. He has drawn my attention to the relevant

discussion made in the judgment and has submitted that the learned Judge has not properly appreciated the evidence produced on behalf of the appellants. As against that Mr. Bhatt learned A.G.P., has submitted that the award of the Reference Court is just and proper in the facts and circumstances of the case and there is no scope of further increase in the market rate.

5.1. There is no dispute to the fact that the acquisition of the land was needed for public purpose and it was duly acquired after complying with the necessary procedure as provided under the Act. The question is only of quantum of compensation. I have perused the relevant discussion made by the learned Judge in his judgment. In paragraph 9 of the judgment he has referred to the evidence with regard to two sale transactions that took place round the time the acquisition was made. In that case, land bearing Survey No. 1246 and 1225 situated near the present land were sold to the Tilak Co-operative Housing Society in October, 1977 for Rs. 2 lakhs. The total area that was sold was 2 Hectare 40 Are and 79 sq. mtr. Second sale instance that was relied on by the appellants was in respect of land bearing Survey No. 56 and 63/2. The said land was sold to Shakti Co-operative Housing Society for Rs.1,76,251=00. In other words, at

the rate of Rs.22.89 paise per sq. mtr. Both these transactions are almost contemporary. However, the gap in prices of two transactions is squarely wide. In one case, the land is sold at 8.60 paise per sq. mtr., whereas, in the other, it is sold at 22.89 paise per sq. mtr. The appellants have however, failed to show that the nature of the land under acquisition was identical or very similar to the land sold at Rs. 22.89 ps. On the contrary, the material on record shows that the land is not of very good quality. Nevertheless, if the total amount of compensation that has been awarded to the appellants is considered, it comes to Rs.14.10 paise per sq. mtr. Therefore, the rate appears to be quite reasonable, especially keeping in view the two sale instances produced by the appellants. The market value determined by the Reference Courtfor present land is also in between the prices of two sale instances referred to above. In view of the same, it clearly appears that the learned Judge has not committed any error in determining the total market value at Rs.14.10 paise per sq. mtr., The appeal has, therefore, no merit and it is dismissed with no order as to costs.

R & P to be re-transmitted to the Reference Court forthwith.

[Akshay H. Mehta, J.]

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